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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,968	11/26/2003	Ronald D. Riker	RIKE 02908 PTUS	9513
32233	7590	06/07/2004	EXAMINER	
STORM & HEMINGWAY, L.L.P. 8117 PRESTON RD. STE. 460 DALLAS, TX 75225			PECHHOLD, ALEXANDRA K	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,968

Applicant(s)

RIKER, RONALD D.

Examiner

Alexandra K Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/29/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. **Claims 1, 2, 4, 5, 9, 11, and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Hansen (US 2003/0072904).**

Regarding claim 1, Hansen discloses a post comprising: a hollow, continuous sleeve formed of thermoplastic resin, seen as encasing material (20) in Fig. 6 which Hansen states in para. 39 can be made of a polymeric resin, thermoplastic coated material, fiberglass or the like; and a continuous core disposed within the sleeve, seen as layers (24) in Fig. 6, which are generally coextensive with the interior surface of the sleeve, the core being formed partially of recycled rubber which Hansen describes in para. 36.

Regarding claims 2 and 15, Fig. 6 illustrates the sleeve and core as circular in cross-section and the core being hollow.

Regarding claims 4 and 5, Hansen meets the claimed recitations of the core being formed of at least 10% or 20% by weight recycled crumb rubber, the balance being recycled thermoplastic resin. Hansen states in para. 36 that the core is primarily made of discarded, recycled tires (30) which are processed, and discloses in para. 38

that the layers (24) can be bonded with epoxy resins, polymers, nails or the like, or a combination thereof. Therefore, Hansen's disclosure in para. 36 that a majority of the core (therefore satisfying the at least 10% or 20% requirement) is made of up discarded recycled tires, and states in para. 38 that epoxy resins, polymers, nails or the like, or a combination thereof are used to bond the layers (24), thereby comprising the balance of the core, meets the claimed recitations.

Regarding claim 9, Hansen discloses the limitations of the claimed invention as discussed by the examiner in regards to claims 1 and 4 above.

Regarding claim 11, Hansen discloses the limitations of the claimed invention as discussed by the examiner in regards to claim 5 above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 3, 6-8, 10, 12-14, and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (US 2003/0072904).**

Regarding claims 3 and 10, Hansen fails to specifically disclose high density polyethylene. But Hansen does disclose in para. 39 that encasing material (20) can be made of a polymeric resin, thermoplastic coated material, fiberglass or the like. It would have been obvious to one having ordinary skill in the art at the time the invention

was made to modify the material of (20) to be high density polyethylene, since Hansen discloses in para. 39 several other related materials, including a polymeric resin, thermoplastic coated material, fiberglass or the like.

Regarding claims 6, 12, and 19, Hansen discloses that the construction material disclosed may comprise a utility pole, guardrail, a signpost, and may be suitable for many other construction applications (para. 20). Hansen fails to disclose the area of the signpost. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the signpost of Hansen to have an area of less than 10 square feet, since signs of all kinds of varying sizes are well known and widely seen.

Regarding claims 7 and 13, Hansen fails to disclose the sleeve and core as coextruded, instead encasing the pole with the material (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the means by which the core and sleeve of Hansen are made and joined so that they are coextruded, since either process would still result in the same finished product of the claimed post, and extrusion is a commonly used process.

Regarding claims 8, 14, and 17, Hansen fails to disclose the post having crash properties conforming to NCHRP Report 350. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the post of Hansen to have crash properties conforming to NCHRP Report 350, since the applicant states in the specification that the standards have been adopted by most states.

Regarding claim 16, Hansen discloses the limitations of the claimed invention as discussed by the examiner in regards to claims 1 and 4 above. Hansen fails to disclose specifically the use of low-melt-index polyethylene as the balance of the core, and fails to disclose the sleeve and core as co-extruded together. But Hansen does state in para. 38 that epoxy resins, polymers, nails or the like, or a combination thereof are used to bond the layers (24), thereby comprising the balance of the core. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material that bonds the layers (24) in Hansen to be low-melt-index polyethylene, since Hansen states in para. 38 that epoxy resins, polymers, nails or the like, or a combination thereof are used to bond the layers (24), providing similar materials with comparable properties. It would also have been obvious to one having ordinary skill in the art at the time the invention was made to modify the means by which the core and sleeve of Hansen are made and joined so that they are coextruded, since either process would still result in the same finished product of the claimed post, and extrusion is a commonly used process.

Regarding claim 18, Hansen discloses the limitations of the claimed invention as discussed by the examiner in regards to claim 5 above. Hansen fails to disclose specifically the use of low-melt-index recycled polyethylene as the balance of the core. But Hansen does state in para. 38 that epoxy resins, polymers, nails or the like, or a combination thereof are used to bond the layers (24), thereby comprising the balance of the core. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material that bonds the layers (24) in Hansen to

be low-melt-index recycled polyethylene, since Hansen states in para. 38 that epoxy resins, polymers, nails or the like, or a combination thereof are used to bond the layers (24), providing similar materials with comparable properties.

Regarding claim 20, Fig. 6 illustrates the sleeve and core as circular in cross-section and the core being hollow.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
5/25/04